

सत्यमेव जयते

## असाधारण

प्राधिकार से प्रकाशित

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**No. 148, Port Blair, Friday, August 6, 2004**

## अण्डमान तथा निकोबार प्रशासन

## ANDAMAN AND NICOBAR ADMINISTRATION

**सचिवालय/SECRETARIAT**

## NOTIFICATION

Port Blair, dated the 6<sup>th</sup> August, 2004.

No. 141/04/F.No. 3-264/2001/Labour.—In pursuance of sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Act. No. 14 of 1947) read with Notification No. LR-1(59)/55 dated 13<sup>th</sup> December, 1955 of the Govt. of India, Ministry of Labour, the Lieutenant Governor ( Administrator), Andaman and Nicobar Islands hereby orders for publishing the following Award given by the Labour Court, Andaman and Nicobar Islands in the matter of an Industrial Dispute between the Secretary/Pradhan, Gram Panchayat, Uttara, Middle Andaman and its workmen Shri Anil Kumar Das S/o Late Umesh Chandra Das, R/o Uttara and Smti Geeta Biswas W/o Shri Krishna Kant Gharami R/o Uttara Ex-DRMs referred to the Labour Court for adjudication vide Administration's Notification No. 3-264/2001/Labour dated 6-8-2001.

**IN THE COURT OF THE PRESIDING OFFICER  
LABOUR COURT  
ANDAMAN AND NICOBAR ISLANDS**

**Present: Shri Brindaban Mandal, Presiding Officer,  
Labour Court, Port Blair**

I.D. Case No. 27 of 2001.

1. Shri Anil Kumar Das  
S/o Late Umesh Chandra Das  
R/o Uttara
2. Smti Geeta Biswas  
W/o Shri Krishna Kant Gharami  
R/o Uttara

----- First Party

**-Versus-**

The Secretary/Pradhan  
Gram Panchayat  
Uttara  
Middle Andaman

..... Second Party

Thursday, the 10<sup>th</sup> day of June, 2004

**AWARD**

1. The present schedule reference was made to this Labour Court under sub-section (1) of section 10 read with sub-section (5) of section 12 of the Industrial Disputes Act, 1947 (Act No. 14 of 1947) read with Notification No. LR-1(59)/55 dated 13-12-1955 of the Government of India, Ministry of Labour, by the Lt. Governor (Administrator), Andaman and Nicobar Islands. At the time of making the reference, the referring authority was satisfied as per provision of sub-section (4) of section 12 of the Industrial Disputes Act, 1947 (Act No. 14 of 1947) that an industrial dispute exists in between the Secretary/Pradhan, Uttara Gram Panchayat, Uttara and its workmen Shri Anil Kumar Das and Smti Geeta Biswas, Ex-DRMs. The present reference has been made to this Labour Court to pass an Award on the scheduled dispute, which is as follows:—

“Whether the demand of Shri Anil Kumar Das and Smti Geeta Biswas, Ex- Daily Rated Typist and Clerk for their reinstatement in regular scale of pay with back wages against the termination of their services by the Office of the Pradhan, Uttara Gram Panchayat represented by the Panchayat Secretary, Uttara Gram Panchayat is legal and justified. If so, what relief the aforesaid workmen are entitled to?”

2. On receipt of the reference, notices were served upon both the parties, and after having notice both the parties appeared and filed their respective statement of demands and written objection thereto. The members of the first party viz Anil Kumar Das and Smti Geeta Biswas by filing written statement stated that the petitioner Anil Kumar Das was appointed as Daily Rated Worker by the Pradhan, Gram Panchayat Uttara, Middle Andaman, vide office order No. 27 dated 20-10-1997 and he was allowed to continue his work till 30-6-2000. But he was removed from his service by the said Panchayat authority (second party) without complying with the provision of section 25 F of ID Act, 1947. Subsequently he requested the Gram Panchayat authority and the Director of Panchayat for his reinstatement in service, as because he being one of the members of the first party, worked under the second party Uttara Gram Panchayat continuously more than 906 days. The another petitioner Smti Geeta Biswas also appointed as unskilled worker with effect from 1-10-1997 under the said Uttara Gram Panchayat and her appointment was given by office order No. 28 dated 20-10-1997. She worked under the second party continuously upto 30-6-2000. But the second party removed her unauthorisedly without complying with the provision of section 25 F of ID Act. She requested the second party for their reinstatement in service, as the first party worked continuously more than 240 days under the second party, but they were not reinstated. Thereafter the members of the first party approached the Assistant Labour Commissioner, Rangat and represented their case and requested for their reinstatement, but in vain. It is also contended in the said written statement that after their retrenchment the second party also appointed other employees and they did not comply with the provision of section 25H of ID Act by not reinstating the members of the first party. By filing the written statement they claimed to be reinstated under the second party.
3. The second party Uttara Gram Panchayat contested this case by filing written objection. It is contended inter-alia in the said written objection made by the second party that the necessary office order for appointment of Anil Kumar Das vide order No. 27 dated 20-10-1997 was issued by the then Pradhan, Pahar Mondal of Gram Panchayat Uttara, Middle Andaman. It is also contended that on the basis of order dated 10-9-1997 and 22-9-1997 though the then Pradhan proposed for appointment of Daily Rated Mazdoor. But according to resolution it was stated that in case of appointment of DRMs, payment would not be made from grant-in-aid due to its untied fund, but payment of the DRM would be adjusted from the grant-in-aid part II fund. It is also contended that the virtue of Circular No. GP/39/Panchayat dated 19-2-1996 of A & N Administration issued by the Secretary (Panchayat) and another Circular No. 3-20/Gel./DP/2000/745 (b) date 27-7-2001 issued by the Deputy Director Panchayat advising the PRIs not to recruit any staff either on daily rated basis or on a consolidated pay. In spite of that advice, the then Pradhan Uttara Gram Panchayat issued several orders without having any authority and the said orders/resolutions were not sent for approval of the Administration. The muster roll was written and maintained by the first party Anil Kumar Das which is contrary to the provisions of Panchayati Raj Institution. The appointments of the first parties were made purely on adhoc basis and made without any authority, which is contrary to the law. It is also contended that though interview was held by issuing notices, but the first party did not attend the interview. Accordingly the members of the first party have no right to claim any re-employment. In the circumstances the second party prays for dismissal of the petition filed on behalf of the members of the first party.

4. Subsequently the first party by filing a rejoinder stated that an award in favour of the members of the first party may kindly be given holding that the workmen's removal from the services by the second party is absolutely illegal, unjustified and in contravention to the provision of the section 25 F as well as section 25 H of ID Act. By filing above mentioned application the petitioners first party claimed proper reliefs, so that they may be reinstated.
5. The main point for consideration in this reference is whether the action taken by the second party in retrenching the services of the first party is legal and justified? If not, whether the petitioners of the first party are entitled to be reinstated into their services in regular scale of pay including the back wages.

### **Decision with reasons**

6. The members of the first party cited P.W.I. Smti Geeta Biswas. She appeared for herself as also for the other petitioner. The second party cited D.W.I.
7. P.W.I. Smti Geeta Biswas in her evidence stated that she alongwith Anil Kumar Das being appointed as DRMs used to work under the second party Uttara Gram Panchayat as D.R. Labourers. She joined in her service on 1-10-1997 which continued till June 2000. She also stated stand that the petitioner Anil Kumar Das also worked under the second party as DRM for a period of more than 906 days. Smti Geeta Biswas worked as daily rated labourer under the second party for a period of more than 872 days at a stretch. By adducing the evidence the members of the first party prays for their reinstatement. The second party by adducing evidence through D.W.I. Sabitry Das stated that the she being the Pradhan of Uttara Gram Panchayat would have no objection in reinstating the members of the first party if necessary order or direction in that regard is passed.
8. Admittedly the members of the first party were appointed as daily rated labourers under the second party, Uttara Gram Panchayat. Admittedly, the members of the first party worked under the second party for a period of more than 240 days. It is also admitted that for their retrenchment from their services the provision of section 25 F as well as section 25 H of ID Act have not been complied with. It is also admitted that after retrenchment of the members of the first party from their services, the second party appointed some employees as daily rated labourers. This being the position I am inclined to hold that the second party violated the provision of section 25 H of ID Act. As no one month's notice prior to the retrenchment of the first party workmen from their services has been given by the second party, and as no wages in lieu of one month's notice has been paid at any time prior to retrenchment of the members of the first party. I am constrained to hold that before the said retrenchment from their services the second party did not comply with the provision of the section 25 F of ID Act.
9. That apart in view of decision reported in 1999 LAB. IC 1553 we should say that as a matter of fact whereby arithmetical count a workman is also to demonstrate that he had completed work for a period of 240 days in course of 12 calendar months, the relief of reinstatement has to be granted in his favour. In this connection it would be opt to take notice of the decision given by the Hon'ble Apex court in the case reported in AIR 1980 S.C. 1219. That apart according to that decision I should say that when it has been established that as the members of the first party worked for a period of more than 240 days in service at a stretch in course of 12 calendar months, their right for reinstatement should be protected according to law.
10. In view of my above observation and discussion I am of the option that the second party was not right in retrenching the first party workmen from their services and the first party workmen are entitled to be reinstated into services with immediate effect. The first party workmen claimed for reinstatement in regular scale of pay. It is nobody's case that the first party workmen underwent the process of any selection test or interview against any vacant post in accordance with the relevant Recruitment Rules, if any. Admittedly they are casual employees and they were engaged by the second party on daily rated basis fixed under the Minimum Wages Act. There is no whisper either in the written statement of demand or in the evidence of P.W.I. that the first party workmen discharging the duties similar to that of a regular employees. Under such circumstances, I think, the claim of the first party for granting them the relevant regular scale of pay cannot hold to be justified. As they are Daily Rated Employees, I think the first party workmen are also not entitled to any back wages during the intervening period, but they should be deemed to be in continuous services for other purposes, as if there had not been any retrenchment. So the action taken by the second party the Secretary/Pradhan, Gram Panchayat, Uttara, Middle Andaman, in terminating the services of the first party is quite illegal and unjustified. In the given circumstances, I am inclined to hold that the petitioners should get the relief of reinstatement as sought for.

Hence,

**Awarded**

that the action taken by the Secretary of the Pradhan, Uttara Gram Panchayat, Middle Andaman, in terminating the services of Shri Anil Kumar Das and Smti Geeta Biswas, Ex-Daily Rated Labourers with effect from 30-6-2000 is neither legal nor justified. The members of the first party i.e. Shri Anil Kumar Das and Smti Geeta Biswas are entitled to be reinstated into their services with immediate effect. But in view of my above discussion and observation, the members of the first party workmen are not entitled to any regular scale of pay or back wages during the intervening period they remained unemployed till date, but they should be deemed to be in continuous services for other purposes. As if there had not been any disengagement.

Let this Award be forwarded to the Lt. Governor (Administrator), Andaman and Nicobar Islands for favour of his information and due publication in the official gazette.

Given under my hand and seal of the court this 10<sup>th</sup> day of June, 2004.

Typed at my dictation & corrected by me.

P.O.

Sd/-  
(Brindaban Mandal)  
Presiding Officer,  
Labour Court.

By order of the Lieutenant Governor,

Sd/-  
(M.K. Kunhi Mohammed)  
Assistant Secretary (Labour)